

## MINUTES

### STATE OF WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

#### December 10, 2001 – Regular Meeting

Rowe Six Conference Center, Building 1  
4224 6<sup>th</sup> Avenue SE  
Lacey, Washington

#### ITEM 1: CALL TO ORDER

Jim Luce called the meeting to order at 1:32 p.m., a quorum was present. Dick Fryhling, new representative for Community, Trade & Economic Development was welcomed to the Council.

#### ITEM 2: ROLL CALL

##### *EFSEC Council Members*

Community, Trade & Economic Development	Dick Fryhling
Department of Ecology	Charles Carelli
Department of Fish & Wildlife	Jenene Fenton
Department of Natural Resources	Terry Kirkpatrick
Utilities and Transportation Commission	Dick Byers
Chair	Jim Luce
Walla Walla County	Pam Ray – via phone
Port of Walla Walla	Jim Kuntz – via phone
Columbia County	Earle Marvin – via phone

?

##### *EFSEC Staff And Counsel*

Allen Fiksdal	Irina Makarow
Mike Mills	Mariah Laamb
Michelle Elling	Robert Fallis, AAG, EFSEC

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##### *Guests*

Karen McGaffey, Perkins Coie	Bill Frymire, WDFW, AAG
Mike Sotak, Duke Energy	Laura Schinnell, Energy Northwest
Nan Thomas, OAH, Sumas ALJ	Chuck Lean, Wallula Generation
Brian Carpenter, Rebound	Pete Dewell, OAH
Mike Elmer, Starbuck Power	Darrel Peeples, Newport Northwest
Ron Lavigne, CFE, Wallula	Mitch Pointdexter, Duke Energy
Robert Kahn, Newport Northwest	Thomas McKinney, BPA
Kirk Deal, Rebound	
Liz Thomas, Preston Gates & Ellis -	via phone

**Mike Mills:** I note the presence of Chair Jim Luce and there is a quorum.

**Jim Luce:** Thank you very much. We have two action items on the agenda. We'll begin with the Wallula Power Project and the Starbuck Power Project application process. Members have within their packets a number of documents that have been prepared in anticipation of the discussion today and grounded on the discussions that we've had for several weeks concerning this particular issue. I would only at the outset ask Mike Mills, the compliance manager, to go over briefly what is before us today and then would have some comments myself.

### **ITEM 3: WALLULA POWER PROJECT**

<b><i>Application Review Process</i></b>	<b><i>Mike Mills, EFSEC Staff</i></b>
The application review process for Wallula and Starbuck Power Projects has been combined. The contents of this discussion is listed under Item 4.	

### **ITEM 4: STARBUCK POWER PROJECT**

<b><i>Application Review Process</i></b>	<b><i>Mike Mills, EFSEC Staff</i></b>
<p><b>Mike Mills:</b> All right, I'd refer members to my memo dated December 6<sup>th</sup>, entitled Application Review Process, Wallula and Starbucks Projects. Staff has attempted to write a summary of the discussion that has been going on for the past several weeks regarding the application review process for those two projects. This has been a very active discussion that has involved not only the Council, but also members from interest groups and the applicants, and Counsels for the Environment for these projects. The primary question before the Council is whether the Start of the Adjudication, or Call for Intervention, should be keyed to the Council's independent consultant's determination that the application is deemed complete or sufficient to proceed with the adjudication, or should the start of the adjudication be keyed to issuance of the Draft Environmental Impact Statement (DEIS). The scheduling options that have been presented are entitled Wallula A, which keys to the completeness determination, and Wallula B which keys to issuance of the DEIS.</p> <p>Council member Chuck Carelli also developed another option C that keys to the consultant's determination but leaves the intervention period open longer. Attached to my memo in your packets is a timeline chart that shows the A, B and C options. I have summarized and you've had an opportunity to go through the descriptions and the differences between the three options. Staff feels that options B and C would allow the Council to complete it's review and have a recommendation to the Governor within the twelve months required by law. Staff supports the recommendation of the Chair for option B. On November 30<sup>th</sup>, Chair Jim Luce prepared a memo to the Council regarding his recommendation that option B be selected, and I think we've shared this with the Executive Committee and also with members of the public.</p> <p>In addition to that, Chair Luce has prepared another single sheet entitled, "Why Option B," which provides further reasoning in support of option B. We've also provided the completeness determination that was issued by our independent consultant, Jones and Stokes, that's in a letter dated October 19<sup>th</sup> to Chair Jim Luce from Jones and Stokes. This letter is in response to EFSEC staff's request as to whether the Wallula Application is sufficient to proceed with the adjudication. And, in the second paragraph, Jones and Stokes states, "it is our opinion that the</p>	

Wallula Application has complied with the topical guidelines listed in chapter 463-42, Washington Administration Code and it's sufficient to proceed with the adjudication". In addition to that, I've included an e-mail from Grant Bailey to myself dated December 5, 2001. Following the Executive Committee, staff had gone back to Grant Bailey and asked if there were significant changes between the environmental report and the application, and the evaluation that they were doing in preparing the Draft Environmental Impact Statement.

Mr. Bailey says in his letter: "in my opinion our review process of the preliminary application helped to reduce the potential for significant changes not being resolved. Having seen both now, there is very little difference between the application analysis and the impact analysis we are submitting for the EIS".

In addition, we provided handout materials that were shared with the Executive Committee and also a letter from Rebound dated November 21, 2001, the only letter that we had received prior to Friday on this matter. That's a summary of the materials in your packets. As I've said staff supports option B and I believe Chair Luce is going to speak to that.

**Chair Luce:** I'll speak briefly to that because I think everyone here has had a good amount of opportunity to review the documentation before us. This is either the third or fourth meeting we've had on this particular discussion. Option B from my perspective gets us there in terms of meeting the statutory requirement and the Legislative intent of completing the application process within twelve months. Unfortunately, under current practices that doesn't happen.

**Chair Luce:** Is everybody comfortable with the adoption of the agenda? O.K. All right, we formally adopted the agenda, and I was about to offer some comments on why option B, beginning with the fact that the statute requires, and the Legislative intent is very clear, that within twelve months EFSEC needs to complete it's review of an application and make a recommendation to the Governor. And, regrettably for a whole variety of reasons, this doesn't always happen under current circumstances. The difference between option B, which I have recommended, and option C, primarily turns on the question of how long intervention will remain open. I am encouraging the Council and our members from Walla Walla County and Columbia County, that we should take a course where we start the intervention when the application is complete and we close it off after a period of thirty days. That will serve as an action forcing device, and I think an action forcing device is critical to encourage the professionals who appear before us, both the applicants and all of the other parties, to begin dealing in earnest with the issues, discovery, stipulations and settlements if possible. Short of that sort of an action-forcing device, my concern is that as a practical matter there won't be sufficient incentive to prepare the case, other priorities simply get in the way, it's human nature. There are a lot of things that people need to do and they will postpone until they absolutely have to do those things for that reason. The Administrative Law Judge (ALJ) would then move the case along with prehearing orders. If there wasn't enough information already on the record, the Preliminary Site Study (PSS), the application and the environmental report, we might be dealing with a different situation. There is a lot of information on the record and we've already heard in the case of Wallula, our consultant anticipates very few changes in terms of the work that has been done to date on the DEIS.

But notwithstanding that, when we get to the point that the DEIS is complete and comments have been offered and received, we will have a window of opportunity, I'll call it a safety valve, for parties who think there is new information, to raise that information before the Administrative Law Judge and seek to intervene or supplement their intervention at that point in time. So, I think that there is a powerful incentive there for them to do that and the standard is

set forth in the memorandum that I prepared on November 30<sup>th</sup>. That standard is a standard that says Council will allow new issues because of new information in the DEIS and other persons can seek to intervene for the first time, if they haven't already, if they can establish that newly discovered information, not previously known or reasonably discoverable, demonstrates that an interest of theirs could be affected by the proposed project.

I think that one point of clarification is necessary in the memorandum that compliance manager Mike Mills set out dated December 6, 2001. He states with respect to the Wallula Option B that the Council will decide if new parties should be allowed in, in accordance with accepted intervention guidelines. In other cases the Administrative Law Judge has participated in late intervention decisions. ***Point of clarification.*** We will be taking our legal guidance from the Administrative Law Judge pursuant to the standard which I just articulated and then at that point in time, the Council will make the decision based on the law and based on what we hear from the parties in terms of, if it's necessary, their late intervention. I think that Option B places the burden on all parties to move expeditiously. I recognize there may be some burden, because resources are limited for everyone, but that will require all of us to prioritize our work. And, the public's right to participate, I just want to note in closing, is always protected.

First of all, my reading of the statutes says the Counsel for the Environment is going to represent the public, but in addition to that, individual members of the public are always welcome to attend our public meeting sessions. Any information they present will be part of our record and will be carefully considered by the Council in its deliberations. I think that it's consistent with what the Governor wants to do and what the Legislature has encouraged us to do, and I would hope that we could act on that, both with respect to Wallula and Starbuck today.

Now, within option B, the ALJ and parties will work out the adjudicative schedule through pre-hearing conferences, and will set dates when specific testimony is prepared in advance. There's flexibility in this process to do something that hopefully makes less work for everybody, because no one desires to have any more work, we've got enough as it is. So, with that I will close it off and turn it to other Council members for whatever comments they may have, and that includes, of course, our representatives from Walla Walla County and our representative from Columbia County.

**Dick Byers:** Mr. Chairman, I have a clarifying question regarding the chair's recommendation in the November 30<sup>th</sup> memo.

**Chuck Carelli:** Please state your name for the people on the phone.

**Dick Byers:** Dick Byers for the Utilities and Transportation Commission. In the November 30<sup>th</sup> memo in which you offer your recommendation, I'm just trying to clarify that that memo has to be seen, together with the memo of Mr. Mills, since Mr. Mills memo actually describes what options A, B and C are. For example, there isn't anything in the November 30<sup>th</sup> memo that talks about an intervention period of 30 days, or not. That's actually described in Mr. Mill's memo. So is it correct for me to assume that your recommendation is done together with the memo of Mr. Mills that describes what these options are?

**Chair Luce:** That's absolutely correct, member Byers. The last couple of sentences in Compliance Manager Mill's memorandum, clarify that the Administrative Law Judge is the one that will make the recommendations to us with respect to the law regarding intervention after the issuance of the DEIS, so you have to read those two together to understand the full import of option B.

**Dick Byers:** And the clarification that you just made is a clarification of Mr. Mill's memo with respect to what the roles of the ALJ and the Council will be in the post DEIS intervention window.

**Chair Luce:** Yes. Councilperson Fenton.

**Jenene Fenton:** Jenene Fenton, Fish and Wildlife. Another clarifying question. You have Council member Carelli's colored version of three options, and my question is, based on your document called "Why Option B", my understanding is that the twelve month period would start once the application is deemed complete, but in looking at staff's recommendation and time schedules on the handout, the schedule has just Wallula schedule A and B, and Starbuck A and B. It looks as though on Council member Carelli's, as though the starting point for both of those documents is the application submittal. Do we have a document that actually shows the starting point when the application is deemed being acceptable, because I think Council member Carelli's version in color makes it very clear that two months have been eliminated off of the schedule potentially and necessarily giving you more time towards the draft environmental impact statement.

**Chair Luce:** I'm not completely understanding your question, but staff probably does.

**Jenene Fenton:** Well, if you look at the colored version, it says, for instance, the application is filed in July sometime. July and August.

**Chair Luce:** That's correct.

**Jenene Fenton:** And, if you look at both options B and C and it looks as though the twelve months, to meet the statutory requirement would be sometime between June and July, which just happens to be a year.

**Chair Luce:** That's correct.

**Jenene Fenton:** Okay, but your recommendation is when the application is deemed acceptable, the time line for Wallula is actually October 19<sup>th</sup>, and we have then cut six to eight weeks off of the schedule, potentially unnecessarily. And that was the question I had at the Executive Committee meeting, that by doing so, we have potentially cut time for comments and work associated with the development of the DEIS. So I'm just not sure which documents we're looking at as far as what your recommendation is. Are we in fact, starting with the application submittal or application deemed sufficient, and do we have a schedule that shows the correct starting date were dealing with.

**Chair Luce:** We're starting with the application, I believe I laid it out, being complete, and the application is already complete.

**Jenene Fenton:** Correct, as of October 19<sup>th</sup>.

**Chair Luce:** Right, under option B, if we could roll the calendar back we'd already have begun and closed intervention by this point in time. This is a planning chart with one exception, and that's October 19<sup>th</sup>, so we're in real time. Given the fact that we're in real time, we would be calling for intervention as soon as possible after this meeting, beginning the 30 days. The staff would have to advise me on how soon the notice could go out, but very quickly. The 30 days would then close the middle of January, is that a fair assumption? Then the first pre-hearing conference on intervention would follow after that and the Draft Environmental Impact Statement would be completed and issued, after the close of intervention but before the adjudicative hearing.

**Jenene Fenton:** Okay, all I needed to know was that your recommendation is based on application completeness, as the documents before us describe the planning time line.

**Chair Luce:** They have a planning time line on them.

**Jenene Fenton:** Okay, thank you.

**Charles Carelli:** Charles Carelli with the Department of Ecology, and I've got a question going back to staff, and possibly to you, Jim. When the Executive Committee met last week, you partly spoke to the challenge to parties, both Wallula and Starbuck, to get with the Counsel for the Environment and see if they couldn't come to some understanding as to the schedule they would like to proceed upon or were willing to commit to. Have we had a response to that from either the Wallula or Starbuck proponents?

**Chair Luce:** Councilperson Carelli, I have had some conversations with the counsel for Starbuck and Wallula and I've had voice mail communication with Counsel for the Environment. I know that there were attempts made to try to get together, but I don't think they were successful, with one exception. It's as yet to be determined, and that's why I alluded to pre hearing conferences establishing with more certainty, when the discovery would go forward, and when pre filed testimony would go forward. In other words, it would be an attempt on the part of everybody, and I think in good faith, to try to structure a case in such a way as to avoid working, and then re-working an issue later on because of new information.

So, I think it's safe to say that the parties have had conversations, but they haven't reached a final agreement as to their way of proceeding here, and that's why I'm coming back to option B allowing the Administrative Law Judge the flexibility then to make those sort of decisions along the way. The parties, I think once intervention starts, will be highly motivated to make those decisions themselves. They already are, but they'll be even more motivated at that point in time. Staff, do you have anything to add to that?

**Mike Mills:** That's our understanding.

**Chair Luce:** Any other questions? Comments from the public would be welcomed. Councilperson Ray, do you have anything you would like to add?

**Pam Ray:** I don't have anything I would like to add outside of your comments.

**Chair Luce:** And, Councilperson, Earle Marvin?

**Earle Marvin:** Nothing to add. I am just anxious to get on with this.

**Chair Luce:** All right, we'll have some comments from the public now. My only observation would be we've had a lot of testimony about this issue and what process is appropriate and so I would ask you not to be repetitious of matters that we have previously heard and with that encouragement, the floor is open for anyone who would like to address the Council on this issue.

**Darrel Peeples:** Darrel Peeples, the attorney for Wallula is going to be brief. We support the chairman's schedule B and we also respect the blue schedule too. I mean, we think schedule B front-end-loads it, doesn't keep things to the end and I think it has a better chance of getting through. We are concerned with the other schedules getting things bunched up at the end. The only other thing I want to say is that I believe the statute says the twelve month does not run from the time of the application being deemed complete, it runs by the words of the statute as stated in the memo of November 30<sup>th</sup> within twelve months of receipt by the Council of such an application, so the twelve months starts at the receipt of the application. I believe the time line put forward by schedule B is fine, I think the actual time starts from the time of being complete and it's done within twelve months of the time of receipt, so I believe that is in compliance with the statute and support schedule B.

**Chair Luce:** Thank you. Any other members of the public wish to come forward and address the Council?

**Liz Thomas:** Thank you. This is Liz Thomas, counsel for Starbuck Power Company. Again thank you all for the time you've invested in evaluating this decision and thanks also to Counsels

of the various parties and intervenor agencies who have consulted on it as well. We are also supportive of the approach reflected in B. We think it is better to close intervention and then have a safety valve at the end rather than keep it open, because we think that will promote everyone's interest in getting decisions made sooner rather than later, but we'll be comfortable proceeding either way. In terms of when the twelve-month clock runs from, I guess we just heard from Council not to dwell on that legal issue, and we would concur with the position of Wallula that it is from receipt. However, we don't think it is really necessary to resolve that issue because schedule B does resolve any decision within twelve months from that date. We really are focused on the practical question of when can we complete the proceedings on the project and would very much like to complete them by the end of August. On behalf of Starbuck Power only, we are procedurally in a somewhat different posture from Wallula in the determination of completeness has not yet been issued by Jones and Stokes. We would request that when Council comes to the Starbuck project the Council authorize staff to issue a notice of first pre hearing conference once that determination of completeness comes in, without the need for a follow up Council meeting. Thank you very much members of the Council.

**Ron Lavigne:** Good Afternoon. Ron Lavigne, Counsel for the Environment. I'll keep my comments brief since they've been wordy on this topic to date. I did want to respond to some things member Carelli asked in terms of the request made by the chair that the parties get together. We have, in fact, gotten together. We met on Thursday in Seattle and had a conference call again this morning in an attempt to see if we could come to an agreement on a schedule that made sense. We have worked through a schedule that I think is a variation of option B that gets us, and I should say Starbuck and the Counsel for the Environment are comfortable with it, I think because it gets us to the same end point. Yet we haven't gotten agreement from Wallula. Our schedule, while it gets to the same end point, takes care of a major concern that I have with the schedule that appears to be the case for both options A and C, and that problem, which I mentioned at the Executive Committee meeting, is that both schedules appear to have EIS comments and the preparation of pre filed testimony occurring concurrently, and that is a next to impossible job. Unfortunately the end result of that will be that parties will be pushed to put their time and effort into getting their pre filed testimonies done and the comments that the Council gets on the EIS will be of a poorer quality because the simple fact is that it is not simply a matter of working hard.

We're all anticipating that we will be working hard, but you can't do those two tasks at the same time and the one that will take precedent, as a matter of practicality, is getting the testimony done. So what we are suggesting, or certainly the Counsel for the Environment is suggesting, and I believe it is acceptable with Starbuck as well, is that the DEIS comments run concurrent with the discovery period, which would also provide a period for the parties to get together and see if any stipulations could take place. Pre filed testimony would not be due until after the DEIS comment period has run, sometime at the beginning of month nine, or early May on my chart. That still gets us through to a final decision sometime in late August or early September, and to do one additional thing, and I think that's something also that got recommended at the Executive session, was that we would do concurrent closing briefs.

We would each do a closing brief and then have another two week period to respond to it, so it wouldn't be the normal back and forth, so it would cut some time off the schedule by taking that approach and we would also leave the Council approximately five weeks after the final briefing to review the materials and make it's decision. So from the parties perspective, or at least from the Counsel for the Environment's perspective, it sort of shares the pain not by the parties but by

EFSEC as well. And as for the concerns that I have just briefly on option B, and I've touched on them already, and I just want to make sure they are clear. One is that it does have the comments for EIS and the testimony being prepared concurrently. That will be extremely difficult to comply with. It provides no opportunity in that schedule for a discovery period, and finally, there is very little time provided for the parties to sit down and see if stipulations can be reached, and if we were successful in that regard, of course, the adjudicative hearing would be shortened. One last thing I want to say in terms of the running of the twelve-month period is I agree with Liz Thomas that we shouldn't get too fixated on that, but it is something that is somewhat important. As I look at the colored sheet, it seems to suggest that the applications all came in in late July and in fact they didn't come in until late August. I've got in front of me what Wallula submitted on October 10<sup>th</sup>. It's about eight inches worth of application sections, which looks to me to be almost their entire air analysis. So, they want the twelve-month calendar to start running in August, but we get a new pile of stuff dumped on us on October 10<sup>th</sup>. So, I support the chair's efforts to get this done in a year, but I think if it's going to be done in a year the materials need to be complete when we have them. I think it's important that your consultants look at the materials and make sure they are complete.

Frankly, if your consultant comes back and says we think it's complete, Counsel for the Environment is prepared to say the twelve months should run from when the application came in. But, if your consultant says there needs to be more work on the application, or the party submits eight inches worth of documents two months after the application is supposedly complete, then we think that should effect the schedule of all parties, so that there is encouragement to make sure it's actually fair to all the parties and it's fair to all those applicants that actually provide you with complete applications initially rather than dribbling in materials months late. So, again, we could live with the option B as we've modified it, or with I think Mr. Carelli's proposals were acceptable, it is better for the interveners. But the key for us is to have some gap of time between the end of EIS comments and when pre filed testimony would start rather than trying to run those two concurrently. And even with that, I think we still are able to get to an August thirty, or early September decision, which would meet the dictate of the statutes.

**Chair Luce:** Thank you. Do we have any other comments from the public?

**Darrel Peebles:** Could I just respond on that application he put up there. That's not all new information, that was replacement pages, so it's not that much information that's new. It was just replacement pages with some other information coming in.

**Chair Luce:** Thank you. Back to the Council. Do we have a motion?

**Dick Byers:** I have a question.

**Chair Luce:** Yes, sir.

**Dick Byers:** This is a question that I'll have to direct either to you or to CFE. This is Dick Byers again from the Utilities and Transportation Commission. If I understood your point correctly, process wise, having to do with the pre filed testimony and the comments from the DEIS, is the decision we make today with respect to when the adjudication begins, is it dispositive on that issue? It seems to me as though that is a scheduling issue that is the kind of issue that you described that the ALJ would handle with the parties in pre hearing conference.

**Chair Luce:** That's my understanding. Hopefully there will be that flexibility within the pre hearing conference that the parties will be able to structure that in their individual situation.

**Dick Byers:** I think the issue that's raised is a very important one, because the quality of work on both of the parallel processes will require there to be sufficient time and I agree that you can't



clone yourself and do two things at once, so it's important to me to clarify that we wouldn't be prejudging that issue by any action we took today.

**Chair Luce:** We're not prejudging that issue.

**Dick Byers:** Thank you.

**Chair Luce:** Is there a motion from the Council?

**Dick Byers:** **Motion: Adopt the recommendation of the Chair as embodied in the Chair's November 30<sup>th</sup> memo with the attachment of Mr. Mill's December 6<sup>th</sup> memo which describes option B and which is clarified with the discussion we had earlier in this meeting regarding the role that the ALJ would play in providing a recommendation to the Council with respect to an intervention during what is known as the safety valve feature. And allowing the ALJ and the parties to have the flexibility to work through the prefiled testimony issue and the EIS comments in such a way as they can find it mutually agreeable to do that and still adhere to the twelve-month schedule.**

**Earle Marvin:** Columbia County seconds for Starbuck.

**Pam Ray:** Walla Walla County seconds for Wallula.

**Chair Luce:** We are considering Wallula first. The Department of Natural Resources seconds the motion. So we have a motion and a second. Any discussion? Port of Walla Walla, Mr. Kuntz.

**Mr. Kuntz:** I believe that I have the ability to participate in the discussion but not vote and I just want to go on record that we support the Chairman's recommendation. We think it was well thought out and we still believe the public's process is still protected allowing an opportunity to comment throughout the process.

**Chair Luce:** And we do appreciate your coming here today and making that statement.

**Rusty Fallis:** Can I, for the sake of hopeful clarity in the minutes, ask if Mr. Byer's was making a motion that we should interpret as two motions, one for Wallula and one for Starbuck, because I heard two seconds, one from Columbia County and one from DNR.

**Chair Luce:** Yes, you could interpret that as two motions, one for Wallula and one for Starbuck.

**Rusty Fallis:** Okay, and the Wallula motion was seconded by Commissioner Ray?

**Chair Luce:** That's correct, and we will take a vote procedurally on the Wallula application now and then we will have a second vote on the Columbia County Starbuck proposal. Is that consistent with your legal advice that we have two separate application votes?

**Rusty Fallis:** I think we should have two separate application votes. You shouldn't rely on me to keep track of who said what, but can I just make one brief comment, and I think I've made this point before. I think the motions constitute a statement of intent to proceed in a particular way, and the motion is Option B. It's at least theoretically possible that one of the parties in the course of the adjudication may ask you to do something differently. Unless they give you a good reason, I would assume that you would not depart from this, but the point is that by adopting a particular approach today, that doesn't mean that you won't have to exercise your discretion if a party makes a motion and asks you to do something different.

**Chair Luce:** I think that is a very helpful clarification. We have a call and some questions on the Wallula Power Project. The motion is to adopt schedule B as clarified with compliance manager Mills memorandum of December 6, 2001. Call for the vote.

**Mike Mills:** Department of Community Trade and Economic Development.

**Dick Fryhling:** Dick Fryhling votes yes.

**Mike Mills:** Department of Ecology.

**Charles Carelli:** The Department of Ecology abstains.

**Mike Mills:** Department of Fish and Wildlife.

**Jenene Fenton:** Jenene Fenton votes yes.

**Mike Mills:** The Department of Natural Resources.

**Terry Kirkpatrick:** The Department of Natural Resources votes yes.

**Mike Mills:** Utilities and Transportation Commission.

**Dick Byers:** Utilities and Transportation Commission votes yes.

**Mike Mills:** Walla Walla County.

**Pam Ray:** Pam Ray votes yes.

**Mike Mills:** Council Chair.

**Jim Luce:** Jim Luce votes yes.

**Mike Mills:** 6 votes yes and one abstention.

**Chair Luce:** 6 votes yes, one abstention. The motion passes, and Option B is adopted for the Wallula Power Project.

Councilperson Byers, you have already made the motion. Do I understand your motion to include Starbuck and Columbia County?

**Dick Byers:** Yes.

**Chair Luce:** And is there a second with respect to the Starbuck Project?

**Earle Marvin:** Columbia County seconds.

**Chair Luce:** All right, is there any discussion from the Council?

**Chuck Carelli:** I've got a question. How will the Counsel for the Environment organize comments with the recommendation that is being proposed?

**Chair Luce:** Well, my understanding, Councilman Carelli is that Counsel for Starbuck and Counsel for the Environment are working together on a process within the framework of option B, which would make it easier for them to structure the preparation of their pre filed testimony and at the same time be able to provide quality comments for the draft environmental impact statement and that certainly should be supported, both for Starbuck County and to the extent possible for Wallula County. Councilperson Fenton.

**Jenene Fenton:** Question, I think it was requested that part of the proposal for Starbuck include when the schedule or the notice of completion comes out that would trigger intervention. Am I assuming that's part of this motion?

**Chair Luce:** That's correct.

**Mike Mills:** I think you need to repeat it.

**Chair Luce:** The clarification sought by Council person Fenton was whether when the application is deemed complete, that will constitute the effective date for the notice of intervention, which would then proceed for 30 days, and the answer is yes, that is contemplated within the motion, when the application is deemed complete. Any other comments from Council members? Compliance Manager Mills, call the roll.

**Mike Mills:** Department of Trade and Economic Development.

**Dick Fryhling:** Community, Trade, and Economic Development votes yes.

**Mike Mills:** Department of Ecology.

**Chuck Carelli:** The Department of Ecology abstains.

**Mike Mills:** The Department of Fish and Wildlife.

**Jenene Fenton:** Department of Fish and Wildlife votes yes.

**Mike Mills:** Department of Natural Resources.

**Terry Kirkpatrick:** Department of Natural Resources votes yes.

**Mike Mills:** Utilities and Transportation Commission.

**Dick Byers:** Utilities and Transportation votes yes.

**Mike Mills:** Columbia County.

**Earle Marvin:** Columbia County votes yes.

**Mike Mills:** Council Chair.

**Chair Luce:** Jim Luce votes yes.

**Mike Mills:** 6 votes yes and one abstention. The motion carries.

**Chair Luce:** 6 votes yes, one abstention, the motion carries. Option B is adopted for both Wallula and Starbuck Power Project. Thank you all sincerely. This has been a learning experience for me as well as I think a lot of the different parties. This being a pilot project, we're going to see how well this works for our applicants, and then that will in turn foster and encourage perhaps the extension of this process to other projects, so thank you all very much.

**Pam Ray:** This is Pam and I've got to sign off and thank you everyone for all your hard work.

**Chair Luce:** Right, and I would particularly like to thank Councilperson Carelli. He put in a lot of work on devising an alternative proposal, which in many respects, as you are aware Chuck, you and I agreed on much of what needs to be done, and I really appreciate the hard work that you've put in to this, because you have done yeoman's duty. And at the same time I would just like to say that while our Council Manager, Allen was off on the beaches of Hawaii, and Irina was enjoying the snowy countries of the north, which might not have been snowy, Mike Mills did really a lot of really good hard work throughout the entire week to get this package ready to bring to the Council. So I just want to extend my appreciation for all of the hard work that they did. Thank you.

**Pam Ray:** Thank you, goodbye.

**Earle Marvin:** Thank you. This is Earle Marvin saying goodbye also.

**Chair Luce:** I'm going to be here for the next item and then I'm going to have to leave and turn the gavel over to Councilperson Carelli. A very close friend of mine passed away over the weekend, and the funeral is in Walla Walla tomorrow morning. I'm going to be leaving after the information on Satsop.

## **Item 5: Satsop Combustion Turbine Project**

<b><i>Phase II Application</i></b>	<b><i>Mike Mills, EFSEC Staff and Kevin Johnson, Duke Energy</i></b>
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**Mike Mills:** On November 19<sup>th</sup>, Duke Energy and Energy Northwest submitted a request for amendment to the Site Certification Agreement for the Satsop Combustion Turbine Project. Council is aware this combustion turbine project has already been approved and the company is now proposing to construct a second phase at the Satsop site. Kevin Johnson of Duke Energy made a presentation at the Executive Committee meeting last week and we have asked him to review briefly the company's plans for the second phase of this project.

**Kevin Johnson:** Thank you. I am Kevin Johnson, I represent Duke Energy and with me is Laura Schinnell, representing Energy Northwest, together we are the applicants for the Satsop Combustion Turbine Project. I think you have previously received a copy of a few slides. Many of these are similar to the slide that we presented at the executive committee last week outlining some of the features of our proposed expansion on the existing site. The Satsop CT Project has an existing site certification agreement. We are currently under construction on our first phase of

that project on the existing 22-acre site within the Satsop/Grays Harbor Public Development Authority industrial park.

Some of the features of the project are that it's in a location, as you know, that's been developed and permitted for power generation. Our expansion will be located entirely within the previously certified and developed site. We would utilize the existing natural gas supply, or the natural gas supply that is being constructed as part of the Satsop Phase I. We would use the existing water supply and discharge facilities that were constructed for WNP 3 and 5 and we would use the existing BPA transmission lines. Basically our Phase II is a duplicate of Phase I currently under construction. There would be minimal impacts to the environment, it will be fully contained within the existing 22-acre site. There will be no disturbance to on-site natural vegetation or wildlife.

This project will generate about 650 megawatts electric, utilize GE frame 7 gas turbines and GE steam turbine and have the same emissions control technology as Phase I, namely Drylow NOx combustors, selective catalytic reduction system and controls to reduce the ammonia slip. We will utilize the same cooling arrangement as Phase I, the mechanical draft cooling tower, we would also have inlet chillers to enhance efficiency and we would share administrative control room and warehouse spaces with those Phase I. The features of Phase II, would be the same Best Available Control Technology (BACT) for air emissions that are in compliance with the applicable federal and state air quality standards, and our modeling shows that there are less than significant impact levels for all criteria pollutants. Water for Phase II would be purchased from the Grays Harbor PDA, pursuant to an agreement that we've reached with them on use of the existing water supply and discharge system and water rights. No new water rights would be required.

The noise of Phase II would be similar to Phase I, it would meet the state noise criteria. Some of the benefits of Phase II are that we would produce sufficient reliable electric for about 650,000 homes, together with Phase I our total investment at completion at the Grays Harbor part would total \$1,000,000. We predict about 400 construction jobs for Phase II, again similar to those for Phase I, there will be approximately 25 permanent jobs including operations and maintenance and of course significant sales and use, and property taxes.

In our submittal for an amendment to the Site Certification Agreement, we requested expedited processing of this application. We believe it's suitable for such expedited processing on four grounds. Their siting facts have previously been considered; there are no significant air impacts; no new water rights; and no significant change in noise level. The affected area is limited to the portion of the 22-acre site that is not being utilized to site Phase I. The cost in magnitude is essentially the same as Phase I and there is no change in land use.

We have laid out a schedule here on the slide, a kind of schedule. As Mike said, we submitted our application on November 19<sup>th</sup>. We would believe that through expedited processing we might have an approval of the amendment sometime in August of '02. We would intend to mobilize our contractor in September, which would result in a June 2004 commercial operation date. The last few slides in your packet have a couple of views at the site. The one that is titled 'Current Site' this was taken in mid November looking approximately due west. You can see the 22-acre site there in the center of the picture. It shows you work that was ongoing at that time. The next page of Phase II, I have superimposed on it an artists rendering of Phase I, again looking west, showing the 22-acre site with the landscaping berm along Keyes Road. The BPA corridor is to the left and the water treatment facility down in the lower right of the 22-acre site.

In the last picture the slide shows Phase II, August 2004 with Phase I and Phase II, a rendering. That's all I have and I appreciate the opportunity to make the presentation.

**Chair Luce:** Thank you.

**Mike Mills:** I would just like to briefly review the process as staff sees it that we're going to proceed with. As indicated by the company and in their request, they have applied for expedited processing. We feel the amendment will be the result of the review, but we're going to proceed to follow the expedited processing rules and that will require that the company submit an environmental check list, which I believe is being prepared. And staff will also prepare a letter to the company based upon the discussion of process and a depositor fee will be required because we are going to engage an independent consultant to assist staff in reviewing the application and to assist the EFSEC manager to make a SEPA determination on the proposal. As I've indicated, we are going to use the services of an independent consultant. We put out an RFP approximately three weeks ago for consultant services and we did receive two proposals, one from Jones and Stokes and one from Shapiro and Associates. We will be setting an interview schedule in the very near future and hope to have the interviews and the selection of the independent consultant to work on this project proposal within two or three weeks; just as soon as we can get the consultant on board.

We will also send a letter to the Attorney General's office requesting assignment of a Counsel for the Environment. The expediting processing rules mentioned that a Counsel for the Environment should be consulted with, so we will contact the Attorney General's office. We believe they have assigned another Assistant Attorney General to EFSEC projects, so hopefully they have already done that. We will also contact Grays Harbor County because they would sit as a member of the Council, and per the expedited processing rules we will need to schedule a public meeting near the site within sixty days of receipt of their application. We will be working with Council members and the company to try to pick a date in the mid-January timeframe that the Council could present the project proposal and our process to the public. We are also initiating, in cooperation with the Department of Ecology, review of the wastewater discharge permit and the Prevention of Significant Deterioration air permit. As I indicated, we will use the services of the independent consultant to help the manager make the SEPA determination, and then that determination, we believe, will guide the decision on processing and how the Council will proceed on whether this is an expedited process or would require perhaps a more fuller review.

**Chair Luce:** Thank you. Anything else? I am going to take leave. I made one oversight, major oversight, in thanking Mike for all the hard work he did. I forgot to thank the person who is working with Mike, and that's Mariah Laamb. Mariah you did a great job last week pulling this together, thank you very much.

**Chuck Carelli:** Thank you, you can take a seat again for a moment. Council does have some questions and we go first to Miss Fenton.

**Jenene Fenton:** I think, Mr. Johnson when you first started, you indicated there was a handout had some changes from last week. Is it the same handout or is it different?

**Kevin Johnson:** I think we had one slide in there that stated objectives. The second or third slide was removed. This slide has the water lines drawn on it, it's number two. The picture was expanded, size-wise. I don't think there were any substantive changes.

**Laura Schinnell:** No substantive changes and we removed several of the pictures.

**Kevin Johnson:** Yes, if you recall, there were probably six pictures in the back that were not labeled, we condensed those down to three.

**Chuck Carelli:** Mr. Byers

**Dick Byers:** Yes, this is a question for Mr. Fiksdal and Mr. Mills. In the public meetings we've had on the Satsop project in the past, the public has been keenly interested in the cumulative impact of projects. I'm just curious to know whether how the environmental assessment will look; for example, at the accumulative air impact here? Is that an issue that will be modeled, and if so, what are the criteria that apply?

**Allen Fiksdal:** I'm just going to ask Irina to review the PSD because that's the main air-emitting permit that will have to be required, and I think she can answer some of that.

**Irina Makarow:** Under the requirements of the PSD review, cumulative impacts will be assessed as required by federal laws and regulations, and that will include not only the new facility but also the existing facility that is there and is under construction.

**Dick Byers:** And will that include also the other facilities that are being constructed on the previous . . .

**Irina Makarow:** To the extent that the PSD regulations require their inclusion, those will be included. PSD regulations look at the range of impact of the facility and in particular the long range impact on protected class I areas, which are typically national parks, so if a local facility that has not undergone PSD review does not have such long range impacts, it will not be considered. However, within the closer area of impact, the PSD and the new source review that the facility has to go through, we'll make sure that any ambient air quality requirements are met.

**Dick Byers:** I raised this question because of the amount of public testimony we heard on that issue at the last PSD hearing for Phase I, and I would anticipate that there will be similar observations to make on the part of the public at the next public hearing, and so if there are ways to answer that question in advance it would probably behoove us.

**Irina Makarow:** We will certainly take that into consideration in our preparation of the fact sheet that will be issued along with the draft PSD permit that will be issued for public comment and make sure those issues are clearly described and explained.

**Allen Fiksdal:** I think in addition when for noise, in the modeling of the noise impact, we will have to take into account both projects in their noise model. I'm sure that the application they have done that, and that will be looked at, so that the cumulative impact of both of the projects on one site will be looked at, not just one individually.

**Chuck Carelli:** Miss Fenton.

**Jenene Fenton:** If the Site Certification Amendment for Phase I, which is under construction, there are conditions for greenhouse gas mitigation. Does it depend on how the Council feels with the application, whether it's a new application or an amendment, as far as how greenhouse gas mitigation will potentially be handled? I'm not clear how that works.

**Allen Fiksdal:** It depends on what process the Council ultimately uses for review of this. If expedited processing is granted, you still will hold public hearings where you can hear testimony on different issues. It won't be an adjudicated proceeding, but you will be able to hear testimony. The Council will have to determine what the new license, or new SCA will look like, if you want to call it amended or what, you will have that opportunity to put in the requirements you feel are appropriate for the amendment. If you go through an adjudicative process, it is similar, you will hear those issues debated and then decide.

**Jenene Fenton:** Wasn't there a difference between a new application and a potential determination of the DNS on this versus an amendment to the existing SCA as far as what conditions automatically are still in place?

**Allen Fiksdal:** We've done expediting process before and we've gone through full process before, we've never done an expedited process on an existing facility, so I think with the advise of your Counsel, you will be able to determine exactly what you can and can't do. But, it's my assumption, it's my personal opinion now, that you will be able to set the conditions that you feel are appropriate for this plant if you go through an expedited process. It's similar to writing a new permit for a facility; you get to set the conditions. And, the basis for that would be the application review, the public testimony that you'll hear through the public testifying to you, and the consultant's report. I don't think we want to get too far along without guidance from your attorney, but I think you can set the conditions that you feel are appropriate based on the testimony and the application that you'll have before you.

**Chuck Carelli:** Mr. Byers.

**Dick Byers:** Just one clarification there, I think by separate conditions in this instance, you meant recommended conditions, and will have to be approved by the Council.

**Allen Fiksdal:** Right, that's what I mean. Thank you for that clarification.

**Chuck Carelli:** Are there any other Council questions? Is there anybody in the audience that wanted to make a comment at this point in time on Satsop. Then hearing none, seeing none, thank-you very much for coming in today. The next agenda item is Cherry Point. This is an informational item on the agenda. Miss Elling.

#### **Item 6: BP Cherry Point**

<b><i>Project Update</i></b>	<b><i>Michelle Elling, EFSEC Staff</i></b>
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**Michelle Elling:** Thank you. For the BP project, we had come before the Council in late October asking for a Phase II, which was for our independent consultant to review the draft application for site certification for the BP project, prior to BP submitting the application to the Council. I wanted to let the Council know at this time we have what may be a good date for when that application will finally come before the Council and that will be February of next year.

**Chuck Carelli:** You can't get closer than February?

**Allen Fiksdal:** It only has 28 days.

**Michelle Elling:** That's about it. Would you like to add anything Mike? Good, and then the only other thing I wanted to do was to introduce Jack Gooshay. Jack Gooshay, do you want to stand up. Jack Gooshay is our new contact with Shapiro who is going to be working on Phase II and will be following the contract through.

**Chuck Carelli:** Next? I should ask if there are any questions, Council. Okay, and then again, Miss Elling.

#### **Item 7: Mercer Ranch Power Project**

<b><i>Project Update</i></b>	<b><i>Michelle Elling, EFSEC Staff</i></b>
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**Michelle Elling:** On the Mercer Ranch project, I received a message from Kurt Humphrey last week indicating that he intends to submit his application for site certification for the Mercer Ranch Project before the end of this month. I don't have a specific date that he was intending to submit the application, but wanted to let you know that was indeed his intention. I will be

meeting with him later on this month to hopefully get a firmer date and work with our consultant SAIC to get them in place for the next phase.

**Chuck Carelli:** Okay, Council questions? And finally Sumas Energy 2, Irina Makarow.

### **Item 8: Sumas Energy 2 Power Project**

<b><i>Project Update</i></b>	<b><i>Irina Makarow, EFSEC Staff</i></b>
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**Irina Makarow:** Just a quick update. Post hearing filings, other than the briefs, have all been filed. There is still one additional exhibit, which I will be distributing to Council very shortly. Just a reminder of the post-hearing briefing schedule: December 14<sup>th</sup> is the due-date for the Applicant's brief and proposed draft Site Certification Agreement and proposed Council order. January 11<sup>th</sup> is the due date for parties' briefs, and January 25<sup>th</sup> is the due date for the Applicants' response. On the issue of the final supplemental EIS, the schedule intended that the document would be completed and ready for issuance by Council on January 7<sup>th</sup>, and that assumed our previous schedule that thought that the post hearing briefs would actually be completed in December. Given that the post hearing briefing schedule has been extended through to the third week of January and knowing that the Council will require some amount of time for deliberations, this does open a window to allow the Council to review the final SEIS before a camera-ready copy is produced for issuance. Staff is working with Jones and Stokes to coordinate this review within the budget that we have right now, and we anticipate that we would be able to have a redlined administrative review copy to Sumas Council members the first complete week of January, which would be around January 7<sup>th</sup>.

**Chuck Carelli:** Okay, do we have any questions here? I'll kind of lump these three informational items together. Any questions or comments from the audience, either BP Cherry Point, or Mercer Ranch or Sumas Energy? Hearing none, and we've had the chairs report, is there anything else coming before the Council? Jenene.

**Jenene Fenton:** When is staff's report on the Draft EIS's for Wallula and Starbuck due, just for scheduling purposes.

**Irina Makarow:** You will be receiving the administrative review draft of Wallula EIS this Thursday, and you will have approximately two weeks for review. The administrative draft of the Starbuck EIS will be ready at the beginning of next week and you will have through the first week of January for that one.

**Jenene Fenton:** Is that the same schedule or has the schedule slipped?

**Irina Makarow:** The Wallula schedule has slipped a little bit, a few days.

### **ITEM 9: CHAIR'S REPORT**

**Jim Luce:** The other thing I want to point out is under the Chair's report, as you're aware, this coming Thursday we have the beginning of the Standards process. It's a facilitated, hopefully consensus based, process to develop objective quantifiable standards for siting power plants in the State of Washington. That particular meeting will occur in the Weston Building in Seattle, from 9:30 to 11:30 am, and a number of you who have particular expertise have received invitations to attend. I hope Allen would be able to join us, but he can't this time. Other Council members as their interest and time allows, and particularly their area of expertise allows, we



would encourage you to participate as well. What I anticipate as a several month process leading to as much consensus as we can find and then in all probability, moving forward into some form of rule making to adopt standards for siting of power plants in the State of Washington. So that constitutes the Chair's report.

## **Item 10. Other**

**Allen Fiksdal:** One other item. We are working with Department of Community, Trade and Economic Development in putting together a supplemental budget. As part of our budget request we have asked the agencies for letters from their directors indicating that their council representatives are available full time for Council business. We have discussed this before, and I've received two letters and we still need letters from the Department of Fish and Wildlife, Utilities and Transportation Commission, and Community, Trade and Economic Development. As soon as you can get those to me, we can submit our unanticipated receipt budget to OFM, and the sooner the better.

**Dick Byers:** This is a little bit embarrassing for me, but was the request sent as a letter or as an e-mail.

**Allen Fiksdal:** I sent an e-mail to all Council members. Essentially what has happened is that we are requesting in our supplemental budget money for full time Council representation and OFM has requested that we receive a letter from each agency saying that your agency will be using that money specifically for that position and will be back-filling your position with somebody.

**Dick Byers:** Right, I was trying to make certain that the e-mail I recall having seen was the vehicle.

**Chuck Carelli:** Anything else.

**Allen Fiksdal:** We are intending to cancel the Executive Committee meeting scheduled for Monday, the 17<sup>th</sup> and in replacement of that we are considering having the interviews for the consultants to review proposals that we've got in response to our RFP's. So we will be getting back to you specifically to insure that we have officially canceled that meeting and set up the time and dates for the consultants review, and I think Mr. Carelli and Miss Fenton are on that committee. And, Mariah, do you want to introduce our new staff member?

**Mariah Laamb:** Yes, we have a new staff member who is joining us today. Her name is Jill Kent. She's working in the administrative secretarial group here. She'll be processing some of the paper work and we're very happy she's joined us. She's a valuable member now to our office staff.

**Allen Fiksdal:** So now we almost outnumber the Council members.

**Chuck Carelli:** Anything else?

**Mike Mills:** Yes, we want to introduce Richard Fryhling from CTED as a new Council member. Do you want to tell us a bit about yourself Dick?

**Dick Fryhling:** Well, I've been a land use planner for over 30 years. I was a charter member of this organization back in 1971-72 when the first application was processed, so I do have a little history here a long time ago, and I don't remember any of it. So it's kind of what comes around goes around, or something like that, but anyway, here I am again. I'm looking forward to this

activity, and I think it will be a real challenge for me, and just keeping up with some of the new vocabulary and so forth is going to be a big part of the process.

**Allen Fiksdal:** New acronyms. We welcome you and Dick will be replacing Heather, who will be missed greatly, and Mr. Kirkpatrick you are here for this meeting only, or until Mr. Ifie returns, is that correct?

**Terry Kirkpatrick:** I'm here for the Month of December until Mr. Ifie gets back from Africa, where he is getting married.

**Allen Fiksdal:** Yes. That's all we have Mr. Chair.

**Chuck Carelli:** Okay, hearing nothing more before the Council, this meeting is adjourned. The meeting was adjourned at 3:39 pm.